93-469

FILED
SEP 20 1993
OFFICE OF THE CLERK

No._____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

WOOD F. JONES AND MARY L. JONES,
Petitioners,

v.

COMMERCIAL STATE BANK OF EL CAMPO, EDDIE L. POOLE, JR., DAVID MELANSON, GEORGE SPARKMAN, JAMES A. BOULIGNY, RICHARD B. COLLINS, L.L. DUCKETT AND RONALD L. COLLINS, DORTHY MALOTTA, DEPUTY SHERIFF OF WARTON COUNTY, TEXAS, AND R.R. MACHALA, SHERIFF OF WHARTON COUNTY, TEXAS,
Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

JOE ALFRED IZEN, JR.
TBC # 10443500
5222 Spruce
Bellaire, Texas 77401
(713) 668-8815
FAX: (713) 668-9402

Attorney For Petitioners

Alpha Law Brief Company • Houston, Texas • (713) 981-9000 • 1-800-981-9001

QUESTIONS PRESENTED FOR REVIEW

QUESTION ONE

MAY A FEDERAL COURT OBTAIN PERSONAL JURISDICTION OVER A BANKRUPTCY ESTATE WHERE NO BANKRUPTCY TRUSTEE QUALIFIES AS PERSONAL REPRESENTATIVE OF THE ESTATE, BY POSTING BOND AS REQUIRED BY 11 U.S.C. SECTION 322?

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NO. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

WOOD F. JONES AND MARY L. JONES,
Petitioners,

V.

COMMERCIAL STATE BANK OF EL CAMPO, ET AL,
Respondent.

Petition For Writ Of Certiorari To
The United States Court Of Appeals
For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE CHIEF JUSTICE OF THE UNITED STATES, AND TO THE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT:

Petitioners, Wood F. Jones and Mary L. Jones, file this Petition for Writ of Certiorari to review the Judgment of the United States Court of Appeals for the Fifth Circuit which affirmed the Judgment of the United States District Court for the Southern District of Texas, Honorable Kenneth Hoyt, and upheld Judge Hoyt's ruling that the United States Bankruptcy Court for the Southern District of Texas, and the United States District Court for the Southern District of Texas had personal jurisdiction over Petitioners' bankruptcy estate in the absence of qualification of a Bankruptcy Trustee,

mandated by 11 U.S.C. §322 *prior to the closure of the bankruptcy case*.

In support of the Petition, the Petitioners would show the Court the following:

OPINIONS BELOW

A copy of the Order of the United States of Appeals for the Fifth Circuit overruling Wood F. Jones and Mary L. Jones' Petition for Rehearing is attached as Appendix A. The Opinion of the United States Court of Appeals for the Fifth Circuit affirming the District Court's finding that the Bankruptcy Court had jurisdiction over Petitioners' bankruptcy estate in the absence of qualification of a Bankruptcy Trustee as mandated by 11 U.S.C. §322 *prior to the closure of Petitioners' bankruptcy case* is attached as Appendix B. The Judgment of the United States District Court for the Southern District of Texas, Honorable Kenneth Hoyt, holding that the Bankruptcy Court had personal jurisdiction over Petitioners' bankruptcy estate in the absence of qualification of a Bankruptcy Trustee as mandated by Title 11 U.S.C. §322 *prior to the closure of Petitioners' bankruptcy case* is attached as Appendix C. Petitioners' Motion for Relief from Order of Dismissal dated January 8, 1990 pursuant to Rule 60(b) of the Federal Rules of Civil Procedure and newly-discovered evidence is attached as Appendix D. The Order of the United States District Court for the Southern District of Texas dismissing Petitioners' litigation based on a settlement entered in a case before the Bankruptcy Court where no Bankruptcy Trustee ever qualified as mandated by Title 11 U.S.C. §322 *prior to the closure of Petitioners' bankruptcy case* is attached hereto as Appendix E.

JURISDICTION

This is a civil appeal from a United States Court of Appeals. Wood F. Jones and Mary L. Jones' Petition for Rehearing to the United States Court of Appeals for the Fifth Circuit was overruled on the 22nd day of June, 1993. The jurisdiction of this Court is invoked under 28 U.S.C. §1257.

STATUTES INVOLVED

The United States Court of Appeals for the Fifth Circuit purported to affirm the actions of the District Court based on the so-called "de facto" Bankruptcy Trustee exception to the qualification requirements of Title 11 U.S.C. §322. The Court of Appeals based its jurisdiction to make such ruling on Title 28 U.S.C. §157(d)(2).

SUMMARY OF THE CASE

Title 11 U.S.C. §322 requires a Bankruptcy Trustee to post a bond in an amount approved by the Bankruptcy Court in order to *qualify* as the personal representative on a bankruptcy estate.

Petitioners, Wood F. Jones and Mary L. Jones, were removed, as debtors-in-possession, by an Order purporting to appoint Leonard Simon. Leonard Simon *never* posted the bond required by §322 and was removed by the Bankruptcy Court based on Motion of the United States Trustee. *No other bankruptcy trustee qualified as personal representative prior to the closure of Petitioners' bankruptcy case.*

The simple question presented here is whether the requirement to post bond under Title 11 U.S.C. §322 is mandatory or permissive.

In its reported opinion, the United States Court of Appeals for the Fifth Circuit emasculated the bond filing requirements of §322 holding that the failure of *any* Bankruptcy Trustee to qualify during the pendency of a bankruptcy case was immaterial to the question of personal jurisdiction over the bankruptcy estate.

STATEMENT OF THE CASE

QUESTION ONE

ARE A BANKRUPTCY TRUSTEE'S QUALIFICATION REQUIREMENTS PRESCRIBED BY 11 U.S.C. SECTION 322 MANDATORY OR PERMISSIVE? [LACK OF PERSONAL JURISDICTION OVER A BANKRUPTCY ESTATE BASED ON BANKRUPTCY TRUSTEE'S FAILURE TO QUALIFY UNDER 11 U.S.C. SECTION 322 PRIOR TO CLOSURE OF THE BANKRUPTCY CASE.]

The United States Court of Appeals in its reported Opinion relied on the so-called "de facto" Bankruptcy Trustee rule in holding that Leonard Simon's (Petitioners' spurious Bankruptcy Trustee's) failure to qualify as Trustee, before he was removed, had no effect over the Bankruptcy Court's or the District Court's personal jurisdiction over the Bankruptcy Estate. All of the cases cited by the Fifth Circuit involved factual scenarios where *some Bankruptcy Trustee* ultimately qualified, and posted the bond required by Title 11 U.S.C. §322 *prior to the closure of the bankruptcy case.* Compare *Sharfsin v. United States*, 265 F. 916 (C. A. 4, 1920) at P. 918; *In re: Martinez*, 355 F. Supp. 650 (D.C.P-.R. 1972) at P.654; *In Re: Holiday Isles, Ltd.*,29 B.R. 827 (Bankr. S.D. Fla. 1983) at P. 829-31; *In Re: Upright*, 1 B.R. 694 (Bankr. N.S.N.Y., 1979) at P. 698.

Here, the United States Trustee filed a successful motion to remove Leonard Simon based on Simon's failure to qualify and no other Bankruptcy Trustee satisfied §322's requirements before Petitioners' bankruptcy case was closed.

The so-called "de facto" Bankruptcy Trustee exception relied on by the Fifth Circuit has never been applied to excuse qualification of *any* Bankruptcy Trustee before a bankruptcy case is closed. The wording of Title 11 U.S.C. §322, governing the qualification of Trustees, is mandatory rather than permissive. Some trustee must qualify under its terms before a bankruptcy case is closed, otherwise neither the Bankruptcy Court nor the District Courts can obtain the requisite personal jurisdiction over the bankruptcy estate to exercise subject matter jurisdiction.

The Fifth Circuit cites Title 11 U.S.C. §325 as supposed support for its disregard of Congressional intent. Despite the fact that Congress clearly envisioned that those interested in bankruptcy estates would be able to recover against a Bankruptcy Trustee's bond (posted as part of the qualification process under §322) in the event of any malfeasance, the Fifth Circuit opined --

> "The vacancy in the office of trustee during a case does not abate any pending action or proceeding ...."

Citing 11 U.S.C. §325, and held that District Courts and Bankruptcy Courts have personal jurisdiction over bankruptcy estates in the absence of compliance with the prerequisites for qualification (including posting bond) mandated by §322.

These two Sections of the Bankruptcy Code can not be read together to emasculate Section 322's qualification requirements. Congress clearly envisioned that *some*

Bankruptcy Trustee would ultimately post bond in a Bankruptcy case, prior to closure, in satisfaction of §322. The "de facto" Trustee exception simply allows a qualifying trustee to validate the acts of a non-qualified predecessor.

Since no successor trustee, or for that matter, *any* Bankruptcy Trustee, qualified in Petitioners' bankruptcy case before its closure, the "de facto" exception to lack of personal jurisdiction does not apply.

The Fifth Circuit was apparently unmindful of the far-reaching effect of its decision. The Fifth Circuit Panel has created an unprecedented, ill-reasoned, and dangerous bankruptcy environment, where, in the future, Bankruptcy Trustees can bind bankruptcy estates for their actions *without ever having had to qualify as trustees as envisioned by §322.*

No other Circuit has ruled in accord with the Fifth Circuit's decision. No other Circuit should be allowed to. Such a ruling would destroy Congress' statutory scheme which envisions that Creditors and other aggrieved parties may recover for a trustee's malfeasance against the Trustee's bond.

Curiously, the brief Fifth Circuit Opinion does not mention the total failure of any Bankruptcy Trustee to qualify before closure of Petitioners' bankruptcy estate and does not discuss §322. Perhaps, the Fifth Circuit's Panel was unaware of the potentially-disastrous effects of its decision.

REASONS FOR ALLOWANCE OF THE WRIT

1. The Fifth Circuit violated the intent of Congress when it held that Bankruptcy Courts or District Courts may exercise personal jurisdiction over bankruptcy

estates in the absence of some Bankruptcy Trustee's qualification under 11 U.S.C. §322 prior to closure of the case.

2. Congress envisioned a statutory scheme (under 11 U.S.C. Sections 322 and 325) whereby aggrieved creditors or other parties could recover against a Bankruptcy Trustee's bond for any malfeasance committed in office -- therefore, total failure to comply with the qualification requirements is fatal o personal jurisdiction over the bankruptcy estate.

3. Reversal of the Fifth Circuit's Opinion is mandated in order to insure uniform application of the intent of Congress.

CONCLUSION

For all of the above reasons stated herein, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

JOE ALFRED IZEN, JR.
TBC # 10443500
5222 Spruce
Bellaire, Texas 77401
(713) 668-8815
Fax: (713) 668-9402

Attorney for Petitioners

APPENDIX A

RECEIVED JUNE 28 1993
U.S. COURT OF APPEALS
FILED
JUNE 22 1993
RICHARD E. WINDHORST, JR.
CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-2516

W. J. SERVICES, INC.,
Plaintiff,

WOOD F. JONES AND
MARY L. JONES,
Plaintiffs-Appellants,

versus

COMMERCIAL STATE BANK OF
EL CAMPO, ET AL.,
Defendants-Appellees.

Appeal from the United States District
Court for the Southern District of Texas

ON PETITION FOR REHEARING

(June 22, 1993)

Before JOLLY, DUHE and BARKSDALE, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

/s/ John M. Duhé
United States Circuit Judge

CLERK'S NOTE:
SEE FRAP AND LOCAL
RULES 41 FOR STAY OF
THE MANDATE.

APPENDIX B

W.J. SERVICES, INC., Plaintiff,

**Wood F. Jones and Mary L. Jones,
Plaintiff-Appellants,**

v.

COMMERCIAL STATE BANK OF EL CAMPO, et al., Defendants-Appellants.

**No. 92-2561
Summary Calendar.**

United States Court of Appeals,
Fifth Circuit.

May 12, 1993.

Settlement of litigation between estate and debtors' former bank was approved by the Bankruptcy Court, and United States District Court for the Southern District of Texas, Kenneth M. Hoyt, J. affirmed. On appeal, the Court of Appeals held that failure of trustee appointed by bankruptcy court to qualify as trustee, due to failure to post bond, did not deprive bankruptcy court of jurisdiction to approve settlement.

Affirmed.

1. Bankruptcy 2045

Failure of trustee appointed by bankruptcy court to qualify as trustee, due to failure to post bond, did not deprive bankruptcy court of jurisdiction to approve settlement of litigation between bankruptcy estate and debtors' former banker. 28 U.S.C.A. §157(b)(2); Bankr.Code, 11 U.S.C.A. § 325.

2. Bankruptcy 2045

Proceeding to determine acceptability of agreements compromising claims of bankruptcy state is core proceeding which can be finally heard and determined by bankruptcy court, subject to review by district court. 28 U.S.C.A. § 157(b)(2).

3. Bankruptcy 3004.1

Failure of "de facto" bankruptcy trustee to qualify does not invalidate trustee's pre-qualification acts.

Appeal from the United States District Court for the Southern District of Texas.

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:

[1] We are called upon to visit the bankruptcy and related proceedings of the Jones' and their corporation for the third time. Briefly stated, this appeal raises the question whether the failure of the Trustee appointed by the

bankruptcy court to qualify as trustee (he failed to post a bond) deprives the bankruptcy court of jurisdiction to approve a settlement of litigation between the bankruptcy estate and the bankrupts' former banker.

[2,3] It does not. A proceeding to determine the acceptability of agreements compromising claims of the bankruptcy estate is a core proceeding which can be finally heard and determined by the bankruptcy court subject to review by the district court. 28 U.S.C. §158(b)(2); *see In re Case*, 937 F.2d 1014 (5th Cir. 1991). Moreover, the bankruptcy code expressly provides, "A vacancy in the office of trustee during a case does not abate any pending action or proceeding." 11 U.S.C. § 325. Numerous other courts have held that the failure of a "de facto" bankruptcy trustee to qualify does not invalidate the trustee's pre-qualification acts. *See Sharfsin v. United States*, 265 F. 916, 918 (4th Cir. 1920); *In re Martinez*, 355 F.Supp. 650, 654 (D.C.P.R.1972); *In re Holiday Isles, Ltd.*, 29 B.R. 827, 829-31 (Bankr.S.D.Fla. 1983); *In re Upright*, 1 B.R. 694, 698 (Bankr.N.D.N.Y. 1979).

The judgment of the district court is

AFFIRMED.

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED
JUN 22 1992
Jesse E. Clark, Clerk
By Deputy: /s/ illegible

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

W.J. SERVICES, INC.,	§	
AND WOOD F. JONES AND	§	
MARY L. JONES,	§	
Plaintiffs,	§	
	§	
VS.	§	CIVIL ACTION
	§	NO. H-86-4311
COMMERCIAL STATE BANK	§	
OF EL CAMPO; EDDIE L.	§	
POOLE, JR.; DAVID	§	
MELANSON; GEORGE	§	
SPARKMAN; JAMES A.	§	
BOULIGNY; RICHARD B.	§	
COLLINS; L. L. DUCKETT	§	
RONALD L. COLLINS;	§	
DOROTHY MALOTA, DEPUTY	§	
SHERIFF OF WHARTON	§	
COUNTY, TEXAS; AND R. R.	§	
MACHALA, SHERIFF OF	§	
WHARTON COUNTY, TEXAS	§	
Defendants.	§	

ORDER

Came on to be heard the motion of the plaintiffs for relief from order of dismissal dated January 8, 1990 pursuant to Rule 60(b) of the Federal Rules of Civil Procedure and newly discovered evidence and the Court, after due consideration of same, is of the opinion that the same should not be granted. It is therefore,

ORDERED that the individual claims of the plaintiffs, Wood Jones and Mary Jones, are not reinstated on the docket of this Court for final trial and resolution.

SIGNED this 19th day of June, 1992.

/s/ Kenneth M. Hoyt
KENNETH M. HOYT
United States District Judge

United States District Court
Southern District of Texas
FILED
JUN 19 1992
Jesse E. Clark, Clerk

CASE # 86-4311 DATE 6/19/92
STYLE W. J. Services v. Commercial State Bank
TO: DOCKET CLERK
FROM: MYRA BAIRD

PLEASE MAKE THE FOLLOWING DOCKET ENTRY:

"none indicated": Per tele conv. w/_____ atty for pltf and _____ atty for deft; Parties have reached settlement. 90 day Dismissal Order will be entered by the Court. mb

"none indicated": Per tele conv w/ _____ atty f/Pltf/Deft; Parties conferred and resolved matters in dispute. The following motion(s) w/drawn by counsel & conference cancelled. mb

_____
_____

"none indicated": Scheduling Conference held. Parties prepared and signed and Agreed Scheduling Order.

"none indicated": _____ set for _____ at _____ Parties notified by telephone. mb.

PLEASE MAKE THE INDICATED CORRECTION/CHANGE ON THE DOCKET SHEET

"none indicated": Answer/Motion/Notice of Appearance/ Substitution, etc. was filed. Atty for the party does not appear on the front of the docket sheet. Please give me corrected copy.

"none indicated": Amended Complaint/3rd Pty Complaint/ Counterclaim, etc. was filed. New parties do not appear on front of the docket sheet. Please give a corrected copy of docket sheet

"none indicated": Please make the following correction/change on the attached and return.

_____

_____

_____ : *Urgent* Please file the attached IMMEDIATELY & RETURN w/2 copies of the entry.

_____ : Need copy of the complete docket sheet.

_____ : Need copy of the docket sheet with _____ on it.

_____ : Need copy of the front of the docket sheet.

_____

Please make the following docket entry:

Per KMH the defendants request to enjoin pltf & for sanctions is Moot

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

W.J. SERVICES, INC.	§	
WOOD F. JONES AND	§	
MARY L. JONES,	§	
Plaintiffs,	§	
	§	
VS.	§	CIVIL ACTION NO.
	§	H-86-4311
COMMERCIAL STATE	§	
BANK OF EL CAMPO;	§	
EDDIE L. POOLE, JR.,	§	
DAVID MELANSON;	§	
GEORGE SPARKMAN;	§	
JAMES A. BOULIGNY;	§	
RICHARD B. COLLINS;	§	
L.L. BUCKETT; AND	§	
RONALD L. COLLINS;	§	
DOROTHY MALOTTA;	§	
DEPUTY SHERIFF OF	§	
WHARTON COUNTY,	§	
TEXAS; AND R. R.	§	
MACHALA, SHERIFF OF	§	
WHARTON COUNTY,	§	
TEXAS	§	
Defendants.	§	

PLAINTIFFS' MOTION FOR RELIEF FROM ORDER OF DISMISSAL DATED JANUARY 8, 1990 PURSUANT TO RULE 60(b) OF THE FEDERAL RULES OF CIVIL PROCEDURE AND NEWLY DISCOVERED EVIDENCE

TO THE HONORABLE UNITED STATES DISTRICT JUDGE OF SAID COURT:

COMES NOW, the Plaintiffs, W. J. Services, Wood F. Jones, and Mary L. Jones, In Propria Persona, and file this their Motion for Relief from Order of Dismissal Dated January 8, 1990 Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure and Newly Discovered Evidence and, in support of the entry by this Court of an Order setting aside its previous Order of Dismissal of this case entered on the 8th day of January, 1990, would respectfully show unto the Court the following:

1. On January 11, 1990 this Court entered an Order dismissing this case based upon --

"The order of settlement entered this day (in) Bankruptcy Cause No. 86-07048-HA-7 ..."

A true and correct copy of this Court's formal order of dismissal entered January 11, 1990 is attached hereto, marked Exhibit A, and incorporated by reference herein for all intents and purposes.

2. This Court's previous order of dismissal is based on a settlement agreement which had been approved by the Honorable William R. Greendyke, Bankruptcy Judge of the United States Bankruptcy Court for the Southern District of Texas, Houston Division by specific order on the 21st day of March, 1990, in the case styled *In Re: Wood F. and Mary Jones, Debtors*, Case No. 86-08288-H1-11. A true and correct copy of the Court's Final Order purporting to approve a settlement of the litigation pending before this Court in this suit is attached hereto, marked Exhibit B, and incorporated by reference herein, for all intents and purposes.

3. Also, on January 8, 1990, the Honorable Judge Greendyke entered a Final Order in the case styled, *In Re: W. J. Services, Inc.*, Case No. 86-07048-H4-7 which purported to approve a settlement of the cause of action asserted in this case by the corporate Plaintiff, W. J. Services, Inc. A true and correct copy of that order is attached hereto, marked Exhibit C, and incorporated by reference herein for all intents and purposes.

4. Both W. J. Services, Inc. and Plaintiffs, Wood Jones and Mary Jones, timely appealed from the Order of the Bankruptcy Court confirming the settlements of the litigation between Lowell T. Cage (Trustee for W. J. Services, Inc.) and Leonard Simons (purported Trustee for Wood Jones and Mary Jones).

5. On May 4, 1990, the United States District Court for the Southern District of Texas, Houston Division, Honorable David Hittner, entered an order consolidating Civil Action No. 90-1326 (Wood and Mary Jones' bankruptcy appeal from the settlement order) with Civil Action No. CA-H-90-0552 (W. J. Services, Inc.'s bankruptcy appeal from the settlement order). A true and correct copy of that Order of Consolidation is attached hereto, marked Exhibit D, and is incorporated by reference herein for all intents and purposes.

6. Still later, Judge Hittner entered some sort of decision purporting to affirm the two orders of the Bankruptcy Court approving the settlements.

7. Plaintiffs, Wood Jones and Mary Jones, appealed Judge Hittner's decision to the United States Court of Appeals for the Fifth Circuit where it is presently pending a decision and is styled Civil Action No. 92-2113, *Wood and Mary Jones, Appellants, v. Leonard Simon, Et Al, Appellees.*

8. The bankruptcy case of Wood Jones and Mary Jones styled *In Re: Wood and Mary Jones*, Docket No. 86-08288, continued for over a year after the Debtors and Plaintiffs, Wood Jones and Mary Jones, perfected their appeal from the Bankruptcy Court's order purporting to affirm the settlement agreement. On November 21, 1990, the Office of the United States Trustee filed an Expedited Motion to Remove the Chapter 11 Trustee, Leonard Simon, and to Convert the Chapter 11 case to a Chapter 7 proceeding or to dismiss. On December 13, 1990, the United States Bankruptcy Court for the Southern District of Texas, Honorable Manuel D. Leal, entered an order grating the Motion of the United States Trustee's Office's "to remove the purported Trustee, Leonard Simon."

9. The United States Bankruptcy Court also dismissed the Chapter 11 bankruptcy proceeding on December 6, 1990 according to a docket entry appearing on the face of the record. (Dated entry 1/7/91, Docket No. 267).

10. A further examination of the record conclusively establishes that the purported trustee, Leonard Simon, **never qualified as trustee** from the date of the filing of the Chapter 11 Petition by the Jones' Debtors to and including the date (12-6-90) when the Debtors' individual bankruptcy case was dismissed.

11. Having never qualified as a trustee throughout the pendency of the Chapter 11 case and prior to dismissal, Leonard Simon never represented the bankruptcy estate of the Debtors, Wood Jones and Mary Jones. Thus, the bankruptcy estate of Wood Jones and Mary Jones was never properly before the Court in any proceeding to approve any compromise or settlement agreement. Thus, the order entered by the Bankruptcy Court, purporting to approve the

settlement and compromise of the claims of Wood Jones and Mary Jones against the Defendants in this case is void as it was entered by the Bankruptcy Court in absence of personal jurisdiction over the bankruptcy estate.

12. This Court's previous order of dismissal does not specify a dismissal "with prejudice" of Mary Jones and Wood Jones' claims. As can be discerned from a cursory review of its wording, this Court's dismissal order was based solely on representations that the claims of the individual Plaintiffs were "moot" because they had already been settled.

13. Plaintiffs, Wood Jones and Mary Jones, are submitting a Memorandum of Law in conjunction with this Motion which supports the proposition that the settlement order entered by the Bankruptcy Court purporting to compromise and settle the personal claims of Wood Jones and Mary Jones is void due to complete absence of personal jurisdiction over the bankruptcy estate of those Debtors and that the statute of limitations is no bar to reinstatement of Plaintiff's claims on this Court's docket.

14. This Motion is also based on the accompanying Affidavit of Mary Jones which raises newly discovered evidence as grounds for relief -- i.e. that the purported trustee, Leonard Simon, never qualified as trustee in the Chapter 11 proceedings prior to dismissal of same and prior to the date that the Bankruptcy Court lost jurisdiction over the case.

PRAYER

WHEREFORE, ABOVE PREMISES CONSIDERED, Plaintiffs pray that this Honorable Court entertain this Motion and, after due consideration of same, that this Court enter its order: (1) reinstating the individual claims of

Plaintiffs, Wood Jones and Mary Jones, on the docket of this Court for final trial and resolution; (2) setting aside this Court's previous Order of Dismissal dated January 11, 1990; and (3) granting Plaintiffs such other and further relief, both in law and in equity, to which they may show themselves to be justly entitled.

Respectfully submitted,

Mary Jones, In Propria Persona
P.O. Box 1030
El Campo, Texas 77437
(409) 543-1258

Wood Jones, In Propria Persona
P. O. Box 1030
El Campo, Texas 77437
(409) 543-1258

CERTIFICATE OF SERVICE

I, Mary Jones, certify that a true and correct copy of the foregoing was sent by United States mail, postage prepaid, on this the 20th day of May, 1992, to the following:

Lowell T. Cage, Trustee
c/o Greg S. Klinzing
Cage, Hill & Niehause
6363 Woodway, Suite 800
Houston, Texas 77057

Commercial State Bank of El Campo
c/o Edward L. Rothberg
Weycer, Kaplin, Pulaski & Zuber
1414 Summit Tower
Houston, Texas 77047

Sheriff's Dept. of Wharton County
c/o David O. Cluck, Esq.
Lorrance & Thompson
303 Jackson Hill
Houston, Texas 77007

Leonard H. Simon, Trustee
c/o Michael A. Rosenthal
Gibson, Dunn & Crutcher
1700 Pacific, Suite 4400
Dallas, Texas 75201

Duckett, Bouligny & Collins
c/o J. Palmer Hutcheson
Sewell & Riggs
800 MCorp Plaza
333 Clay Avenue
Houston, Texas 77002

Mary Jones

MJONES/TK262

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

W.J. SERVICES, INC.	§	
WOOD F. JONES AND	§	
MARY L. JONES,	§	
Plaintiffs,	§	
	§	
VS.	§	CIVIL ACTION
	§	NO. H-86-4311
COMMERCIAL STATE	§	
BANK OF EL CAMPO;	§	
EDDIE L. POOLE, JR.,	§	
DAVID MELANSON;	§	
GEORGE SPARKMAN;	§	
JAMES A. BOULIGNY;	§	
RICHARD B. COLLINS;	§	
L. L. BUCKETT; AND	§	
RONALD L. COLLINS;	§	
DOROTHY MALOTTA;	§	
DEPUTY SHERIFF OF	§	
WHARTON COUNTY,	§	
TEXAS; AND R. R.	§	
MACHALA, SHERIFF OF	§	
WHARTON, COUNTY,	§	
TEXAS,	§	
Defendants.	§	

ORDER ON PLAINTIFFS' MOTION FOR RELIEF FROM ORDER OF DISMISSAL DATED JANUARY 8, 1990 PURSUANT TO RULE 60(b) OF THE FEDERAL RULES OF CIVIL PROCEDURE AND NEWLY DISCOVERED EVIDENCE

BEFORE the Court on this _____ day of _____, 1992, came on to be heard the Motion of the Plaintiffs for Relief from Order of Dismissal Dated January 8, 1990 Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure and Newly Discovered Evidence and the Court, after due consideration of same, is of the opinion that the same SHOULD / SHOULD NOT BE GRANTED. It is therefore;

ORDERED that the individual claims of Plaintiffs, Wood Jones and Mary Jones, ARE / ARE NOT REINSTATED on the docket of this Court for final trial and resolution. It is further;

ORDERED that this Court's previous Order of Dismissal dated January 11, 1990 IS / IS NOT SET ASIDE.

SIGNED on this the _____ day of _____ , 1992.

_____

JUDGE PRESIDING

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED
JAN 11 1990
Jesse E. Clark, Clerk
By Deputy: /s/ illegible

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

W.J. SERVICES, INC.,	§	
AND WOOD F. JONES	§	
AND MARY L. JONES	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION
	§	NO. H-86-4311
COMMERCIAL STATE	§	
BANK OF EL CAMPO;	§	
EDDIE L. POOLE, JR.;	§	
DAVID MELANSON;	§	
GEORGE SPARKMAN;	§	
JAMES A. BOULIGNY;	§	
RICHARD B. COLLINS	§	
L. L. DUCKETT;	§	
RONALD L. COLLINS;	§	
DOROTHY MALOTA,	§	
DEPUTY SHERIFF OF	§	
WHARTON COUNTY,	§	
TEXAS; AND R. R.	§	
MACHALA, SHERIFF OF	§	
WHARTON COUNTY,	§	
TEXAS,	§	
Defendants.	§	

ORDER

This day the Court is in possession of a certified copy of an order approving a settlement compromise in this case. The parties agree that upon approval of the settlement agreement, this suit is ripe for dismissal. It is therefore

ORDERED that this case is DISMISSED pursuant to the order of settlement entered this day bankruptcy cause No. 86-07048-H4-7.

SIGNED this 8th day of January, 1990.

/s/ Kenneth M. Hoyt
KENNETH M. HOYT
United States District Judge

APPENDIX F

Page *Wood & Mary Jones* — *86-08288-B1-11* DOCKET NUMBER

Date Filed	Date of Entry	Doc. No.	Record
11-21-90	11-30-90	263	OPPOSITION TO Motion to Remove Trustee (#253)/THE COMMERCIAL STATE BANK OF EL CAMPO Atty Rothberg/C/S
11-27-90	11-30-90	264	NOTICE OF Hearing on Motion of United States Trustee to Remove the Ch. 11 Trustee, to Convert or to Dismiss set for 12-6-90 @ 2 p.m., Ctrs #600/Atty Hickman/C/S
12-6-90	12-13-90	265	(MDL) HEARING ON: Expedited Motion to Remove Ch.11 Trustee. Evidence presented to the court. Argument also presented after careful consideration of the testimony & argument of counsel the court dismisses this bankruptcy case. The motion to remove ch. 11 Trustee is GRANTED.
12-17-90	12-28-90	266	MOTION for Reconsideration of Dismissal Order ROSENTHAL & ROSENTHAL & GIBSON, DUNN & CRUTCHER/§9007/Atty Rosenthal-/C/S (1-4)
	1/7/91	267	ORDER OF Dismissal/Ref/#2-50/Moot as I previously dismissed this case on 12/6/90

Date Filed	Date of Entry	Doc. No.	Record
12-20-90	1-7-91	268	MOTION of Lowell T. Cage, Trustee for The Estate of W. J. Services, Inc for Reconsideration of Order Dismissing Case/§9007/CS (diary for 1/10)
1-4-91	1-10-91	269	DEBTOR's Response to Motion for Reconsideration of dismissal Order/by Dale Ellis/-C&S
1-4-91	1-10-91	270	DEBTOR's Response to Lowell T. Cage's Motion for Reconsideration of dismissal Order/by D. Ellis.
1-4-91	1-10-91	271	RESPONSE to Motion of L. Cage, Tee. for The Estate of W. J. Services Inc., for Reconsideration of Order of dismissing Case/by M. Cox.
1-4-91	1-10-91	272	OBJECTION to Motion to Reconsider Dismissal Order Request for Hrg. on Motion to Reconsider/ by M. Cox.
	2-6-91	273	ORDER/in re; Hearing held on 12-6-90- Expedited Motion of US Trustee to Remove the Ch. 11 Tee, to convert or Dismiss(Ref. #265)/Ordered that Leonard Simon is removed as Chapter 11 trustee in this case; Ordered that this chapter 11 Case is DISMISSED, effective 12-6-90; Ordered that the trustee shall ensure payment pursuant to 28 U.S.C. §1930 within 10 days of the entry of this order for quaterly fees

Date Filed	Date of Entry	Doc. No.	Record
			due to the US Tee totalling $750(a minimum of $150.00 per quarter for five quaters)/s-/MDL 1-24-91/c-debtor, Simon, US Tee noticing
	2-6-91	274	ORDER GRANTING RECONSIDERATION MOTION (Ref. #266)/After careful consideration the request is DENIED without prejudice. MDL/1-31-91/c-Rosenthal, debtor, USTee
	2-6-91	275	ORDER on Motion of Lowell T. Cage, Trustee for the Estate of W.J. Services, INc., for Reconsideration of Order Dismissing Case (Ref. #268)/-DENIED WITHOUT PREJUDICE/MDL 1/31/91/c-Cage, debtor, US Tee
2/15/91	2/25/91	276	NOTICE OF APPEAL, filed by Commercial State Bank of El Campo from the final order removing the Chapter 11 trustee and dismissing the Chapter 11 case entered Feb. 6, 1991. Fees paid. $105.00, Parties notified. (rec; # 1158-551)
2/19/91	2/25/91	277	NOTICE OF APPEAL, filed by Rosenthal and Rosenthal and Gibson, Dunn & Crutcher from the order entered Feb. 6, 1991 in connection with the expedited motion of the U.S. Trustee to remove the Chapter 11 Trustee, to convert or to dismiss and from the bench ruling of December 6, 1990, in connection with the

Date Filed	Date of Entry	Doc. No.	Record
			expedited motion of the U.S. Trustee to remove the Chapter 11 trustee, to convert or to dismiss. Fees paid #388954, Parties notified.
8/8/88	2/25/91	278	(RFW) STANDING ORDER DIRECTING RETENTION OF THE RECORD ON APPEAL. (copy only) Parties notified.
2-25-91	3-6-91	279	MTN for Contempt/LARRY D. WOODY-Pro Se-former atty for the Debtor/#9007-20 days 3-14-91/ atty Woody CS
3-5-91	3-6-91	280	MAILING CERTIFICATE/RE:#273 (21)
2/26/91	3/8/91	281	DESIGNATION OF RECORD AND STATEMENT OF ISSUES FOR APPEAL, filed by Commercial Bank of El Campo c/s
3/1/91	3/8/91	282	DESIGNATION OF RECORD AND STATEMENT OF ISSUES FOR APPEAL, filed by Rosenthal & Rosenthal and Gibson, & Crutcher, c/s
3/11/91	3/11/91	283	TRANSMITTAL, Memorandum to the U.S. District Court, re: (Appeal), Assigned CA-H-91-622, randomly assigned to Judge David Hittiner (Previous Judge). parties ntfd. (Instrs #276, 278, 281 & 283

Date Filed	Date of Entry	Doc. No.	Record
3/11/91	3/11/91	284	TRANSMITTAL Memorandum to the U.S. District Court, re: (Appeal), Assigned CA-H-91-623, randomly assigned to Judge Lynn N. Hughes (to be reassigned to previous Judge David Hittner) parties ntfd (#277, 282 & 284)
3-27-91	3-27-91	285	CERTIFICATE OF Telephonic Notice hrg set for 4-23-91 at 11:00 a.m. inCTRM #600 on the 6th Floor (#279) MOtion for Contempt, filed by Larry D. Woody. lefter message with secretary Tony at 512-578-9006. oral arguments hrg only movant to serve notice on all parties in interest and file c/s by Robin Stennis
	3-27-91	286	ORDER RE:Motion For Contempt fld by Atty Woody. (A hearing is required) /s/ MDL 3/25/91 -cc Dr's, atty
3-1-91	3-27-91		ADVERSARY FILED - 91-0159
3/27/91 This pleaed from 4/41/91	3/28/91 ding (287) file per #29 (kgk)	287 remov-	Order TRANSCRIPT of file hearing held 12-9-90/Expedited Motion to Remove Ch. 11 Tee./Commercial State Bank of El Campo.
04/05/91	04/10/91	288	MOTION to Withdraw Motion for Contempt/§9007 Atty Woody/C/S (4-23)

Date Filed	Date of Entry	Doc. No.	Record
	04-25-91	289	ORDER Dismissing Motion for Contempt filed by Larry Woody (#288) for failure to appear and prosecute this matter at the duly noticed hearing /s/ MDL On 4-23-91. (C. to Debtor, Debtor's & UST
4/23/91	4/26/91	290	MDL - HEARING on Motion for Contempt Filed by Larry Woody: This motion is dismissed for failure to appear and prosecute, though duly notified on 3/26/91.
	4/30/91	291	(MDL)ORDER/s/26Apr91/cc debtor, Simon, Rothberg Corrected Transcript of proceedings heard on 12/6/90 at 2PM, docket entry 287 shall be enclosed in an enelope & retained in court file and corrected copy filed
4/30/91	4/30/91	292	Corrected Original Expedited Motion to Remove Chapt 11 Trustee Transcript from hearing held 12-6-90 at 2PM
	5/6/91	293	ORDER Authorizing Withdrawal of Motion for Contempt/Ref. #288/Signed by MDL, 5-2/copy to Debtor, Simon, Woody
7/19/91	7/29/91	294	NOTICE OF Former Trustee's Intent to Return Debtors' Property/Filed by Leonard H. Simon/c.s.